LAWS OF SOUTHERN SUDAN

THE INSURANCE BILL, 2010.

ENACTED BY SOUTHERN SUDAN LEGISLATIVE ASSEMBLY

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(PROVISIONAL ORDER)
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(PROVISIONAL ORDER)
Laws of the Southern Sudan
THE INSURANCE BILL, 2010.

This Act is relating to the establishment of Insurance Companies, regulates the business of insurance and purposes incidental thereto and connected therewith.

CHAPTER ONE: PRELIMINARY.

1. Title and Commencement:-

This Act may be cited as the Insurance Act, 2010 and shall come into effect on the date of signature.

2. Application:

This Act shall apply to all insurances, general, marine, air and reinsurance companies, insurance and reinsurance broking companies, reinsurance brokers and agents, loss adjusters and assessors, risk inspectors and representatives of foreign companies engaged in such activities in the Southern Sudan.

3. Repeal and Saving:

All former insurance legislation in Southern Sudan is hereby repealed, provided that all acts, orders done or issued under the repealed provisional order shall remain in force till amended or repealed in accordance with the provisions of this Act.

4. Definitions:-

In this Act, unless the context otherwise requires, the following words and phrases shall carry the meanings assigned to them:-

"Central Bank" means the Bank of Southern Sudan (BoSS) established under the Bank of Southern Sudan Act, 2005;

"Commission " means the Southern Sudan Insurance Commission established by Section Two of this Act;

"Foreign Company" means an insurance company not incorporated and licensed to operate in Southern Sudan;

"Insurance" means the business of undertaking liability by way of insurance including reinsurance in respect of loss of life and personal injury and any loss or damage,

including liability to pay damage on compensation, contigent on occurrence upon the happening of a specified event.

"Loss Adjuster" means a person registered under this Act to undertake professional loss adjusting business for, or on behalf of an insurer, an insured or any other person;

"Insurance Agent" means a person appointed and authorized by an insurer to solicit applications for insurance or negotiate for insurance coverage on behalf of the insurer, and to perform other functions that may be assigned to him by the insurer, and who in consideration for his services receives commission from the insurer.

"Insurance Broker" means a person:-

(a) Not being an agent; and

(b) Acting as an independent contractor for commission or other remuneration, who solicits or negotiates insurance business on behalf of an insured or prospective insured other than himself;

"Insurer" means a person carrying out insurance business as defined in this Act and includes a reinsurer;

"Intermediary" means a person who invites other persons to make offers or proposals or to take other steps with a view to entering into contract of insurance with an insurer, but does not include a person who merely publishes invitation to the order of another person;

"National Company" means insurance companies incorporated and licensed to operate in Southern Sudan in accordance with the provisions Companies Acts, enacted from time to time in Southern Sudan.

"The Ministry for Finance and Economic Planning" means the GoSS Ministry for Finance and Economic Planning.

"Minister" means the Minister for Finance and Economic Planning;

"President" means the President of the Government of Southern Sudan;

"The Government of Southern Sudan" (GOSS) means the Government established by the National Interim Constitution and the interim Constitutions of 2005;

"Council" means the Council of Ministers;

"Mutual Insurance Company" means a company without share capital and whose policy holders are the only members of the company, in accordance with the provisions of its Constitution;

"Re-insurer" means a person who carries on reinsurance business and includes retrocessionnaire;
"Reinsurance Business" means a business of undertaking liability to pay money to insurers or reinsures in respect of contractual liabilities in respect of insurance business incurred by insurers or reinsurers and includes retrocession;

"Retrocession" means the reinsurance of reinsurance business accepted by a reinsurer;

"Retrocessionaire" means a person reinsuring a reinsurer;

"Person" means natural or legal person;

"Pound" means the Sudanese Pound (SDG);

5. Insurance and Insurance Business.

(1) No person other than a person licensed to operate under this Act, shall use the word "insurance", "assurance" or "reinsurance" or any derivations in English or any other language as part of his/her business name.

(2) No person, other than a person licensed as an insurer under this Act, shall issue any insurance policy on:-

(a) Persons who are at the time of effecting a contract are residents of Southern Sudan;

(b) Goods or assets situated in Southern Sudan;

(c) Ships, trains, aircrafts or vehicles registered in/to the Southern Sudan; and

(d) Goods imported from other countries in/to Southern Sudan except personal effects and donations.

6. Insurers to be Bodies Corporate.

No person shall carry on insurance business in Southern Sudan except:-

(a) a company incorporated under the Companies Act, 2003;

(b) an insurance corporation established by law;

(c) A Co-operative Insurance Society registered under the Co-operative Societies Act 2003; or

(c) A mutual insurance company.

7. Classification of Insurance Business.

Insurance business shall comprise of:-

(a) Life assurance;

(b) Non-life insurance, consisting of the following classes:-

(i) Fire insurance,

(ii) Burglary insurance,

(iii) Personal accident insurance,

(iv) Employers liability insurance,

(v) Public liability insurance,

(vi) Marine hull insurance,

(vii) Marine cargo insurance,

(viii) Aviation insurance,

(ix) Motor vehicle insurance,

(x) Crops, fishing and livestock insurance,

(xi) Bonds,

(xii) Contractors all risks insurance,

(xiii) Machinery breakdown and installation, boiler explosion insurance,

(xiv) Any insurance other than specified above;

(c) Reinsurance business in respect of any of the foregoing classes.

8. Minimum Capital Requirements.

(1) A non National Company shall not be licensed as an insurer unless it has a paid up capital of not less than:-

(a) 100,000 Sudanese Pounds, in case of life or non-life insurance business;

(b) 250,000 Sudanese Pounds, in case of reinsurance business.

(2) The paid-up capital of an insurer or reinsurer as prescribed in subsections (1) and (2) above, may:-

(a) Be invested in such fixed assets in the Southern Sudan as the Bank of Southern Sudan shall approve;

(b) Consist solely of ordinary shares with the same value each.

(3) The licence of a company registered under this Act, shall be cancelled if the company does not comply with the provisions of subsection (3) after two years from the date of registration.

(4) Every insurer shall, transfer from its profits each year, before any dividend is declared and after provision has been made for taxation, a sum of 5 % of the profits, to be paid up capital of the insurer to facilitate capital base growth.

(6) The Commissioner may on the recommendation of the Commission and approval of the Ministry of Finance, by an order, amend the minimum paid-up capital or security deposits requirements under such terms and conditions as may be determined.

9. Security Deposits.

(1) Every insurer shall establish and maintain at the Bank of Southern Sudan, a security deposit of at least 30% of the prescribed paid-up capital of the company.

(2) The deposit paid under subsection (1) shall be invested by the Bank of Southern Sudan in short term investments and securities and the Bank of Southern Sudan shall issue a certificate of such investment to every insurer who has deposited money with the Bank of Southern Sudan in accordance with the provisions of this section.

(3) All the income accruing from a deposit under this section shall be payable to the insurer making the deposit.

(4) The deposit paid under this section shall be part of the assets in respect of the capital of the insurer.

10. Use of Security Deposits.

The security deposits made under section 9 shall be available to the insurer in the following circumstances:-

(a) Where an insurer suffers a substantial loss arising from liability to claimants and the loss is such that it cannot be met from its available resources, the Commission may after ascertaining the nature of the claim, and upon application made by the insurer, approve the withdrawal from the security deposit of the insurer an amount of not more than 10% of the security deposit and any amount withdrawn shall be replaced by the insurer not later than ninety days from the date of withdrawal;

(b) In the event of withdrawal or winding -up of insurance business, security deposit shall first be utilized for the discharge of any liabilities arising out of the policies transacted by the insurer, which are undischarged at the time of closure or winding-up of the insurance business.

11. Formation of Mutual Insurance Company.

(1) Not less than twenty five persons may subscribe their names to the Memorandum of Association to form a mutual insurance company.

(2) The memorandum of association shall state:-

(a) The insurance business or any class which is to be carried out;

(b) The name of the company, including the expression “mutual insurance company” in that name;

(c) The location of the head office of the company;

(d) The limitation of liability of its members;

(e) The amount of guarantee capital;

(f) The rights of the contributors towards the guarantee capital;

(g) Methods of clearing the guarantee capital;

(h) Particulars of the governing body of the company;

(i) The method of distributing surplus;

(j) Articles and rules governing the company.

(3) Where a person desires to become a member of a mutual insurance company, he shall enter into the instrument of subscription for members, the subject matter and the amount of insurance desired and shall affix his signature thereto.

(4) An application for licensing a mutual insurance company, under this Act, shall be made within a period prescribed by the Insurance Commission / Corporation.

12. Capital Requirement of Mutual Insurance Company.

(1) The provisions of sections 8 and 9 of this Act shall not apply to a mutual insurance company.

(2) The capital requirement of a mutual insurance company shall be the assets of the company and a surplus of not less than 20% of its assets over its liabilities or any other percentage that may be determined by the Commission / Corporation.

13. Board of Directors.

(1) Every insurance company shall furnish the Commission / Corporation with the names and addresses, nationalities of the members of its Board of Directors, Senior Executives and Technical Personnel.

(2) Any insurance company shall with in fourteen (14) days after the event, notify the Commission / Corporation, in writing, of any changes in the Board of Directors, Senior Executives and Technical Personnel.

14. Disqualification of Officers.

(1) No person shall without the expressed authority of the Commission / Corporation, act or continue to act as an officer or be directly or indirectly involved in the management of an insurance company:-

(a) Who has been an officer of, or directly responsible for the mismanagement of an insurance company, insurance brokerage company, financial institution, security brokerage company or any other investment concern;

(b) Who has been convicted by a court of competent jurisdiction or tribunal of any offence involving fraud or dishonesty;

(c) Who has been adjudged or declared bankrupt by a court of competent jurisdiction or who compounds with his creditors.

(2) No person holding 5% or more of the proprietary interests in any one insurance company shall serve as a management personnel or a principal officer of an intermediary licensed under this Act.

(3) No person holding 5% or more of the proprietary interest of any insurance company, shall own more than 50% of the equity shares of an intermediary licensed under this Act.

15. Head Office and Branches.

(1) An insurer shall maintain a head office in Southern Sudan, and shall notify the Commission / Corporation of the location and address of the head office, in writing.

(2) No insurer shall open a new branch or agency or close down or change the location of its head office, branch or agency without the approval of the Commission.

CHAPTER TWO

THE INSURANCE COMMISSION / CORPORATION.

16. Establishment of the Commission / Corporation.

(1) There shall be established a Commission/ Corporation which shall be known as "The Insurance Commission/ Corporation". The Commission / Corporation shall be a body corporate with perpetual succession and a common seal and may sue or be sued in its corporate name.

(2) The common seal of the Commission/ Corporation shall be in a form determined by the Commission/ Corporation.

(3) The Commission/ Corporation may for, and in connection with its functions and objects, hold, manage and dispose of any property whether movable or immovable and may enter into any contract or other transactions as may be expedient.

17. Objects and Functions of the Commission/ Corporation.

(1) The object of the Commission/ Corporation is to ensure effective administration, supervision, regulation and control of the insurance business in Southern Sudan.

(2) The functions of the Commission/ Corporation shall be to:-

(a) Establish standards for the conduct of insurance and reinsurance business;

(b) Licence all persons involved in or connected with insurance business including insurance and reinsurance companies, insurance and reinsurance intermediaries, loss adjusters and assessors, risk inspectors and valuers;

(c) Approve texts of policies proposal forms;

(d) Approve minimum rates of insurance premiums and maximum commission charge in respect of all classes of insurance;

(e) Safeguard the rights of insurance policy holders and insurance beneficiaries to any insurance contract;

(f) Provide a bureau to which complaints may be submitted by members of the public;

(g) Advise Government of Southern Sudan on adequate insurance protection and security for national assets and national properties;

(h) Supervise and control transactions between insurers and reinsurers;

(i) Promote a sound and efficient insurance market in Southern Sudan;

(j) Ensure strict compliance with the provisions of this Act and regulations made under it, and any other law relating to insurance; and

(k) Undertake any other functions as the Commissioner/ Corporation may designate.

18. Commissioner to give Directives.

The Commissioner/ Corporation may give directives of general nature to the Commission/ Corporation on matters of policy, and the Commission shall give effect to those directives.

19. Composition of the Commission/ Corporation.

(1) The Commission/ Corporation shall be constituted of persons appointed by the Commissioner/ Corporation, in consultation with the Minister of Finance, as follows:-

(a) A Chairperson, who shall not be a director, employee or shareholder, of any insurer, intermediary, loss assessor or loss adjuster;

(b) A Deputy Chairperson, with the same qualifications of the Chairperson;

(c) The General Manager for Insurance;

(d) A representative of the Bank of Southern Sudan; (BoSS)

(e) A representative of the Association of Southern Sudan Insurers ;

(f) A representative of the Southern Sudan Insurance Brokers Association;

(g) Two women representatives of good standing;

(h) A representative of the Ministry of Finance and Economic Planning.

(2) Any member of the Commission/ Corporation other than the General Manager for Insurance may hold office for a period of three years and may be eligible for reappointment for more terms.

(3) A member of the Commission/ Corporation may resign his office in the Commissioner/ Corporation, and may be removed from office by the Commissioner/ Corporation for inefficiency.

(4) If a member of the Commission/ Corporation dies, resigns, removed from office or otherwise vacates office before the end of term of office, the Commissioner/ Corporation may appoint another person in his place, and the person appointed shall hold office for the unexpired period of the term of office of the person in whose place he was appointed and may be eligible for re-appointment.

(5) Members of the Commission/ Corporation shall be paid allowances as the Commissioner/ Corporation may determine, in consultation with the Minister of the Ministry of Finance and approval of the Council of Ministers.

20. Provisions Relating to Chairperson and Deputy of the Commission/ Corporation.

If the Chairperson or Deputy Chairperson of the Commission/ Corporation becomes a Director, employee or shareholder of an insurer, intermediary, loss assessor or loss adjuster, he shall inform the Minister, within fifteen days, of the event and shall cease to be the Chairperson or Deputy Chairperson on the expiry of fifteen days.

21. Meetings of the Commission/ Corporation.

(1) The Commission/ Corporation shall meet for the discharge of its functions as often as business requires, and without prejudice to the above, the Commission/ Corporation shall meet at least once a month, the Chairperson may convene a meeting whenever necessary or on the written request of at least three members of the Commission/ Corporation.

(2) The Chairperson or his Deputy shall preside at all the meetings of the Commission/ Corporation and in the absence of both the members shall elect one of them to preside.

(3) The quorum at any meeting of the Commission/ Corporation shall be four.

(4) Decisions at the meetings of the Commission/ Corporation shall be passed by simple majority of the members present and voting, and in the case of a tie, the chair shall have a casting vote.

(5) The minutes of all the proceedings of the meetings shall be kept by the Commission/ Corporation.

(6) The Commission/ Corporation may invite any person as a consultant or adviser at any of its meetings.

(7) Any member of the Commission/ Corporation who has any interest in any transaction or matter before the Commission/ Corporation shall disclose the nature of his interest and shall not take part in the deliberations with respect to that transaction or matter, if the Commission/ Corporation decides that the nature of interest might prejudice the deliberations and consideration of the matter.

(8) Subject to the provisions of this Act and regulations made there under, the Commission/ Corporation may regulate its own procedures.

22. Common Seal of the Commission/ Corporation.

(1) The application of the common seal of the Commission/ Corporation on any document, shall be authenticated by the signature of the General Manager for Insurance and the Secretary to the Commission/ Corporation, and in the absence of the General Manager, the Deputy General Manager for Insurance shall sign, and the person performing the functions of the Secretary shall sign in the absence of the Secretary.

(2) The signature of the General Manager for Insurance and the Secretary shall be independent from the signature of any other person who may sign the document as a witness.

(3) A document purporting to be an instrument issued by the Commission/ Corporation and sealed by the common seal of the Commission/ Corporation and authenticated in the manner provided under this section, shall be received in evidence without further proof unless the contrary is shown.

23. Committees of the Commission/ Corporation.

(1) The Commission/ Corporation may, for the discharge of its functions appoint Committees that may be necessary consisting of members or non members of the

Commission/ Corporation or both, and may assign to any of the Committees any functions as may be determined.

(2) The Commission/ Corporation shall appoint one of its members to be the chairperson of each committee under subsection (1) above.

(3) Members of the committees established under subsection (1) shall be paid allowances as the Commission/ Corporation may determine.

Staff of the Commission/ Corporation.

24. The General Manager for Insurance.

(1) There shall be a General Manager for Insurance who shall be appointed by the Commissioner on the recommendation of the Commission/ Corporation and approval of the Minister of Finance, on terms and conditions to be determined by the Commission/ Corporation.

(2) The General Manager for Insurance shall:-

(a) Be a person with qualifications, considerable knowledge, experience and competence in insurance business and general administration; and

(b) Not be a director, employee or shareholder of any insurer, intermediary, loss assessor or loss adjuster.

(3) The General Manager for Insurance shall be the Chief Executive of the Commission/ Corporation and shall be responsible to the Commission.

(4) Subject to the provisions of this Act, and the general supervision and control of the Minister, the General Manager for Insurance shall be responsible for the day-to-day operations, administration, organization and control of the staff, of the Commission/ Corporation.

(5) The General Manager for Insurance shall, from time to time, keep the Commission/ Corporation and the Minister informed of the progress of insurance business in the Southern Sudan and of the operations of the Commission/ Corporation.

25. Secretary of the Commission/ Corporation.

(1) There shall be a Secretary to the Commission/ Corporation who shall be appointed by the Commission/ Corporation on terms and conditions to be determined by the Minister.

(2) The provisions of paragraph (b) of subsection (2) of section 24 shall apply to the Secretary.

(3) In addition to any other functions and duties that may be conferred upon the Secretary by the Minister or the General Manager for Insurance, the Secretary shall:-

(a) Take the minutes of the meetings of the Commission/ Corporation and its Committees; and

(b) Keep the records of all the activities of the Commission/ Corporation and its Committees.

(4) The Secretary shall be responsible to the General Manager for Insurance in the performance of his functions and duties.

26. Other Staff of the Commission/ Corporation.

The Commission/ Corporation may have other officers and staff as it may determine in consultation with the Minister.

Financial Provisions of the Commission/ Corporation.

27. Funds of the Commission/ Corporation.

(1) The funds of the Commission/ Corporation shall be from the following resources:-

(a) Licence fees payable by insurers and intermediaries, loss assessors and loss adjusters;

(b) Grants from Government of Southern Sudan or other sources;

(c) Monies accruing to the Commission/ Corporation by way of revenue;

(d) Loans granted to the Commission/ Corporation;

(e) Donations; and

(f) Such other monies including fines that may accrue to the Commission/ Corporation in the discharge of its functions.

(2) Every licensed insurer, reinsurer, insurance or reinsurance intermediary and insurance loss assessor or adjustor shall pay to the Commission/ Corporation an annual contribution of a sum to be determined by the Commission/ Corporation in consultation with the Minister for Finance.

(3) The financial year of the Commission shall be the same as financial year of the Bank of Southern Sudan.

(4) The Commission/ Corporation shall be exempted from payment of any taxes and duties.

28. Credit Facilities and Borrowing Powers of the Commission/ Corporation.

The Commission/ Corporation may:-

(a) On the guarantee of Government of Southern Sudan, obtain credit facilities from financial institutions on the approval of the Bank of Southern Sudan;

(b) Borrow funds required for carrying out its functions, with the approval of the Bank of Southern Sudan.

29. Accounts and Audit of the Commission/ Corporation.

(1) The Commission/ Corporation shall keep proper books of accounts of all its income and expenditure and proper records in relation to those accounts.

(2) The accounts and records of the Commission/ Corporation kept under subsection (1) above shall be in a form prescribed by the Bank of Southern Sudan.

(3) The accounts of the Commission/ Corporation shall be audited by the Auditor General or an auditor appointed by him.

30. Annual Report by the Commission/ Corporation.

The Commission/ Corporation shall, not later than three months after the expiration of each financial year, submit to the Commissioner, annual report on the activities of the Commission/ Corporation during that financial year, including the audited accounts and the auditors certificate.

CHAPTER THREE

LICENSING OF INSURANCE AND RE-INSURANCE COMPANIES.

31. Licensing of Companies.

(1) No person shall transact insurance or reinsurance business in Southern Sudan, without a valid licence granted for that purpose.

(2) Without prejudice to the provisions of subsection (1), the Commission/ Corporation may authorize the effecting of insurance with a foreign insurer in exceptional circumstances.

(3) No person shall be granted a licence under this Act unless his principal object is the transaction of insurance or reinsurance business.

(4) No person shall be granted a licence unless the provisions of sections 8 and 9 of this Act unless the qualifications of the Directors are fulfilled.

(5) The qualifications of the Directors shall be as may be prescribed by the Commission/ Corporation.

32. Application for a Licence.

(1) A person proposing to transact insurance business shall apply to the Commission/ Corporation in a prescribed form, for a licence, which application shall be considered by the Commission/ Corporation.

(2) The application referred to under subsection (1) shall contain the following information:-

(a) Name and address of :-

  (i) The proposed company;
  (ii) The directors;
  (iii) The shareholders;

(b) Nationality and occupation of directors;

(c) Nationality and shareholding of shareholders;

(d) Proposed location of company's offices;

(e) The estimated number of employees;

(f) The technical expertise, qualifications, experience, nationality and other relevant information about the proposed management and key staff;

(g) The capital structure and earning prospects of the insurance company;

(h) Business, financial plans and earnings forecasts for at least three years;

(i) Any other information relating to the viability of the insurance company or other matters as the applicant considers relevant to his application.

(j) Documentary evidence that the security deposit to which section 9 refers, has been deposited in a Bank of Southern Sudan.

(k) Specimen of the proposal forms, policies contracts, receipts and any other documents to be used in connection with the insurance operations;

(l) The premium rates and rating scales;

(m) The proposed scale of maximum commissions to insurance intermediaries;

(n) Details of the proposed reinsurance protection and the company's net retention in each class of business;

(o) Any other document or information that the Commission/ Corporation may require.

(3) An application under subsection (1) shall be accompanied by the Memorandum and Articles of Association, the Constitution or rules, and a certificate of incorporation of the insurance Company in accordance with the provisions of Companies Act, 2003.

(4) Where an application under subsection (1) does not provide all the required relevant information, and where clarification is necessary, the applicant may be called upon to provide the information or clarification to complete the application.

33. Factors to be considered in an Application.

In considering an application for a licence the Commission/ Corporation shall, satisfy itself as to:-

(a) The financial status and antecedents of the applicant;

(b) The competence and integrity of the proposed management and administration;

(c) The adequacy of the applicant's capital structure, earning prospects, business and financial plans, reinsurance and retention proposals; and

(d) Whether public interest will be served by the granting of a licence.

34. Processing of Applications.

(1) The Commission/ Corporation shall within two months after receipt of a complete application, investigate and prepare a detailed report in respect of each application.

(2) For the purpose of making a report under subsection (1), the Commission/ Corporation shall appoint a Committee of not less than three members of the Commission/ Corporation, for the purpose.

35. Grant of Licence.

(1) The Commission may:-

(a) If it is satisfied that the applicant complied with the provisions of this Act, grant a licence to the applicant, on payment of the prescribed fee;

(b) Refuse to grant a licence and give reasons for that decision.

(2) An insurance licence issued under subsection (1):-

(a) Shall remain in force for one calendar year;

(b) May be renewed on application on payment of the prescribed fee;

(c) Shall automatically lapse where the company is wound up.

(3) The Commission/ Corporation shall communicate its decision under subsection (1) to the applicant within one month from the date of its decision.

(4) The applicant may appeal to the Commissioner/ Corporation within thirty days from the receipt of the decision, if aggrieved by the decision of the Commission/ Corporation, and the Minister shall make his decision within thirty days from the receipt of the appeal and his decision shall be final.

36. Suspension and Revocation of Licence.

(1) The Commission/ Corporation may at any time suspend or revoke the licence of an insurer where it considers that:-

(a) It is in the public interest or it is required for protecting policy holders interests;

(b) The business of the insurer is not being conducted in accordance with sound insurance principles, practices and ethics of the business;

(c) The relevant minimum capital and security deposit requirements specified in chapter one has not been complied with by the insurer;

(d) The minimum margin of solvency has not been maintained;

(e) The relevant reserve requirements have not been complied with;

(f) The insurer did not commence insurance business within six months from the date of obtaining a licence to operate;

(g) The insurer had made a false statement to the Commission, which statement was material for licensing and which he knew or might have known to be false;

(h) A judgment arising out of any insurance liability obtained in any High Court in Southern Sudan against an insurer remains unsatisfied, without good reasons, for more than ninety days from the date of the final judgment;

(i) The insurer has ceased to qualify as an insurer under this Act;

(j) The insurer repeatedly acted in an illegal way or ignored the requirements of the Commission/ Corporation.

(2) The Commission/ Corporation shall before the suspension or revocation of any licence, give notice to the insurer requiring him to remedy any breach, and where the breach cannot be remedied, to show case why the licence should not be suspended or revoked.

(3) Where the licence is suspended or revoked, the Commission/ Corporation shall notify the insurer in the prescribed form.

(4) The Commission/ Corporation shall give reasons for its decision under subsection (1) above.

(5) Any aggrieved insurer may, with in thirty days from the date of the receipt of the Order of suspension or revocation of his licence, appeal to the Minister and the Commissioner shall make his final decision within thirty days from the date of receipt of appeal.

(6) Except for the purposes of winding-up its business, no insurer, whose licence has been revoked, shall carry on insurance business in Southern Sudan.

(7) No insurer shall take on any new insurance business or renew any existing policy:-

(a) Where there is an appeal against a revocation of a licence, until the appeal is decided in favour of the insurer; or

(b) In case of suspension of a licence, until the suspension is lifted.

(8) The Commission/ Corporation shall publish in the Gazette and Newspaper of wide circulation in the area, where the affected insurer has an office, any revocation or suspension of a licence of an insurer, as soon as practicable.

CHAPTER FOUR

CONDUCT AND OPERATIONS OF INSURANCE.

37. Credit on Premiums.

(1) An insurer shall not allow credit on the premium payable for more than thirty days except for business emanating from a broker licensed under this Act.

(2) Where the insured fails to pay premium within the period provided under subsection (1) the policy shall be voidable and the insurer shall be entitled to recover the expenses incurred.

38. Approval of Policy Format Forms --- etc.

(1) An insurer shall not issue any insurance policy unless:-

(a) The text or format of the policy;
(b) The proposal forms; and
(c) The premium rates, rating scales and commission rates,
have been approved by the Commission as suitable for the purpose of insurance business for which it is meant.

(2) No alteration of any text or format of policy, premium rates, rating scales or commission scale proposal form or other document approved under subsection (1) shall be made without the prior approval of the Commission/ Corporation.

39. Unauthorized Alteration of Premium Rates.

(1) Where the insurer charges below the approved rates in respect of non-life insurance business, without the authority of the Commission/ Corporation; the Commission/ Corporation may order the cancellation of the policy issued under the altered premium rates and a pro-rata refund of the premium in respect of the unexpired period of the risk shall be paid to the insured.

(2) Where the insurer alters the approved premium rates in respect of life insurance, without prior authorization from the Commission/ Corporation; the Commission/ Corporation may order the insurer:-

(a) To refund any excess premium charged as a result of the alteration; or

(b) To pay any amount under-charged as a result of the alteration.

40. Commission Payable to Intermediaries.

No insurer shall pay any commission or remuneration to any intermediary who is not licensed under this Act.

41. Modification of Memorandum and Articles of Association.

(1) Any insurance, reinsurance, insurance broking or reinsurance broking company, shall not make any modification in its memorandum or articles of association or any other documents under which the company was established, without the approval of the Commission/ Corporation.

(2) A company referred to under subsection (1) shall forward a notice of intention to make modifications at least twenty one days before the date on which the modification is intended to be done, stating the nature of modification to be made, and if the Commission/ Corporation does not respond within the period of notice, the company shall proceed to effect the modification.

42. Records to be kept in English Language.

(1) An insurer shall keep records of its business transacted in and outside Southern Sudan as may be prescribed by regulations.

(2) Books of accounts, registers, reports, premium rates, prospectuses, policies, proposal forms, claims, certificates and any other forms and documents of insurance and reinsurance operations or of insurance and reinsurance broking, shall be in English language or any other language officially recognized.

43. Prohibition of Misleading Advertisements.

Any person who:-

(a) By advertisement, statement, promise or forecast which he knows to be misleading, false or deceptive;

(b) By dishonest concealment of facts; or

(c) By reckless making of advertisement, statement, promise or forecast which is misleading, false or deceptive; concludes or offers to enter into a contract, transaction or arrangement with an insurer or intermediary relating to insurance business,

commits an offence and shall, on conviction be liable, to a fine not exceeding one million Sudanese Pounds.

44. Institutions Not to Insist on Particular Insurer.

No institution falling under this Act, shall oblige any person transacting business with it, to deal with a particular intermediary for an insurance policy or to insure with a particular insurer in connection with the business being transacted.

45. Restrictions on Loans to Officers and Directors.

(1) No insurer shall give a loan to an Officer or Director of the insurer except:-

(a) A loan on life policy limited to the policy's surrender value; or

(b) A loan forming part of the terms and conditions of service of that officer or Director, repayable within three years.

(2) An insurer who grants, an Officer or Director a loan contrary to the provisions of subsection (1) above, commits an offence and shall on conviction be liable to a fine double the amount of the loan given.

46. Prohibition of Loan to Associate Companies.

An insurer, reinsurer, insurance broker, or reinsurance broker shall not grant a loan directly or indirectly to a company in which the directors, officers or employees of that insurer, reinsurer, insurance broker or reinsurance broker hold more than one third of the shares of that company.

47. Margin of Solvency.

(1) The solvency margin of an insurer shall be:-

(a) In the case of an insurer carrying on life insurance, the liabilities of an insurer shall not exceed the amount of the life insurance fund of the insurer;

(b) In the case of non-life insurance business or reinsurance, the admitted assets of the insurer shall exceed its admitted liabilities by a minimum of 15% of the premium income, net of the reinsurance cessions.

(2) The Commission/ Corporation may, by regulations, prescribe the method for calculating assets and liabilities of an insurer for the purposes of this section.

48. Statement by Insurer.

No insurer shall publish a statement or issue a document on which is printed:-

(a) The authorized capital of the insurer unless the statement shows, in addition, the amount of the capital subscribed and the paid up capital; or

(b) The subscribed capital of the insurer, unless the statement shows, in addition, the amount of the paid up capital.

49. Separation of Accounts and Reserve Funds.

(1) Where an insurer carries on life insurance business together with any other class of insurance business, the insurer shall keep a separate account of all receipts in respect of each insurance business and shall be carried out as separate insurance funds.

(2) Each insurance fund shall represent the liabilities in respect of all policies of that particular business.

(3) The investments of the life insurance fund shall be kept separate from the investments of non-life insurance fund of the insurer.

(4) The insurance fund of each particular business:-

(a) Shall be absolutely for the security of the policy holders of that insurance business and shall be held by the insurer as if that insurer is not carrying on any business other than that insurance business;

(b) Shall not be applied for any liability arising out of any contract which is not applicable to that particular insurance business; and

(c) Shall not be applied for any purpose other than the insurance business of the fund.

50. Insurance Reserves.

(1) An insurer shall establish and maintain in respect of each class of insurance business, the following reserves:-

(a) Reserves for unexpired risks;

(b) Reserves for outstanding claims; and

(c) Contingency reserves to cover fluctuations in securities and variations in statistical estimates.

(2) An insurer shall maintain with respect to non-life insurance business, the following reserves:-

(a) Reserves for unexpired premiums to be 40% of the total net premiums, or such other amount or percentage as the Commission/ Corporation may prescribe;

(b) Reserves for outstanding claims, a sum equal to the total estimate amount of all the outstanding reported claims together with an additional amount of not less than 15% of the total amount of outstanding reported claims, in respect of claims incurred but not reported at the end of the last preceding year ; and

(c) A contingency reserve which shall not be less than 2% of the gross premium income or 15% of the net profits, whichever is greater or such other amount or percentage as the Commission/ Corporation may decide. That reserve shall accumulate until it reaches the minimum paid-up, capital or 50% of the net premiums, whichever is greater.

(3) An insurer shall maintain, in respect to life insurance business, the following reserves:-

(a) A general reserve fund which shall be credited with an amount equal to the net liabilities on policies in force at the time of actuarial valuation; and

(b) A contingency reserve which shall be credited annually with an amount equal to 1% of the premiums.

(4) For the purposes of this section “net premium” means gross premium less reinsurance premiums.

51. Investments.

(1) An insurer shall, at all times, in respect of insurance business transacted in Southern Sudan, invest and hold assets equivalent to not less than the amount of funds in the insurance business, invested in Southern Sudan, as shown in the balance sheet.

(2) Subject to any other provisions of this Act, the investment of funds referred to under subsection (1) above, shall be made up of the following:-

(a) In respect of life insurance fund:-

(i) 30% in Government of Southern Sudan securities;
(ii) 70% in such other investments as shall be approved by the Commission/ Corporation.

(b) In respect of non-life insurance fund:-

(i) 20% in Government of Southern Sudan securities, and
(ii) 80% in such other investments as shall be approved by the Commission/ Corporation.

(3) The Commission/ Corporation may, in consultation with the Bank of Southern Sudan, vary the percentages of the insurance fund to be invested under this section.

52. Accounts to be furnished to the Commission/ Corporation.

(1) An insurer shall within three months after the end of each financial year prepare and furnish the Commission/ Corporation, in the prescribed form with:-

(a) A certificate as to the solvency of the insurer by an actuary or any other person authorized by the Commission/ Corporation;

(b) A balance sheet and profit and loss account duly audited by an auditor approved by the Commission/ Corporation, showing the financial position of the insurance business at the close of that year;

(c) A statement of life insurance business carried on by the insurer in Southern Sudan, in that year;

(d) A certified copy of the revenue account in respect of any non-life insurance business, carried out by the insurer in that year;

(e) Copies of the Board and Management reports on the affairs of the insurer for the financial year, as submitted to the policy holders or share holders of the insurer duly signed and certified;

(f) An analysis of the investments, deposits and expenses of management separately for life and non-life insurance business; and

(g) Such other documents and information relating to the relevant accounts and balance sheet as the Commission/ Corporation may require.

(2) An insurer shall each year furnish the Commission/ Corporation with all essential information regarding its capitalization, its reserves, the classes of insurance business it carries on and such other information as the Commission/ Corporation may require.

53. Amendment of Accounts.

(1) Where in the opinion of the Commission/ Corporation an account of balance sheet furnished by an insurer, under section 52, does not show a true and fair view of its affairs or is not prepared as prescribed, the Commission/ Corporation may, by notice, call upon the insurer to amend the account or balance sheet, or to furnish a correct account or balance sheet as the case may be.

(2) Where an insurer fails to comply with the notice referred to under subsection (1) to the satisfaction of the Commission/ Corporation, the Commission/ Corporation may either amend the account or balance sheet giving the insurer particulars of the amendment or it may reject the balance sheet.

(3) An account or balance sheet amended by an insurer or the Commission/ Corporation shall be treated as if it had been originally submitted in its amended form.

(4) Where the Commission/ Corporation amends an account or balance sheet under this section, the insurer may appeal to the Commissioner/ Corporation if dissatisfied with the amendment.

(5) An appeal under subsection (4) shall be lodged with in thirty days after receipt by the insurer of the amended account or balance sheet.

(6) The Minister shall make his decision within thirty days from the receipt of the appeal.

54. Audit of Accounts and Auditors.

(1) The accounts of every insurer shall be audited annually by an auditor approved by the Commission/ Corporation.

(2) Where the Auditor General audits the accounts, the Commission's/ Corporation's approval shall not be required.

(3) The auditor shall not be an employee, manager, director or shareholder of the insurer.

(4) The auditor shall satisfy himself that the accounts of the insurer have been properly prepared in accordance with the books and records of the insurer.

(5) The auditor shall certify that:-

(a) He has obtained adequate information from the books and records of the insurer;

(b) The accounts of the insurer are in accordance with the information given to him by the insurer for the purposes of the audit;

(c) The accounts and balance sheet are in accordance with the provisions of this Act; and

(d) The balance sheet and profit and loss accounts of the insurer, give a true and fair view of the insurer's financial position and profit or loss.

(6) The financial year of every insurer shall be from 1st January to 31st December.

55. Information to be furnished by Insurer.

(1) An insurer shall prepare and cause to be submitted to the Commission/ Corporation an audited balance sheet within a period of three months after the end of its financial year.

(2) An insurer shall exhibit throughout the year, in a conspicuous place, in each of its offices and branches a copy of its last audited balance sheet with the full and correct names of the directors and a copy of the balance sheet shall be published in a local newspaper of general circulation.

56. Statement and Exhibit of Life Policies.

Every insurer shall, at the expiry of each year of business, prepare in the prescribed form with reference to that year:-

(a) in respect of the life insurance business carried out by him in Southern Sudan, a statement and an exhibit of the policies; and

(b) An exhibit of the life insurance policies issued by him which refer to risks emanating from outside Southern Sudan.

57. Appointment of Actuary.

(1) Every insurer shall, within one month or such other longer period, not exceeding six months, as the Commission/ Corporation may determine, from beginning to carry on long term business, appoint an actuary as actuary of the insurance business and notify the Commission/ Corporation with his full particulars accordingly.

(2) Whenever an appointment under subsection (1) of this section comes to an end, the insurer shall, with in fourteen days, notify the Commission/ Corporation accordingly.

(3) The insurer shall within three months after the appointment comes to an end, appoint another actuary and shall give a notice to the Commission/ Corporation stating the name, qualifications and experience of the new appointee.

58. Actuarial Investigation and Reports.

(1) Every insurer shall, in respect of the life insurance business carried on by him, cause an investigation referring to three years or such other shorter period of time as may be prescribed to be made by an actuary into the financial condition of the life insurance business carried on by him, including a valuation of his liabilities in respect there to and shall cause a report of that actuary to be made in the prescribed form.

(2) Whenever an insurer wishes to distribute profits, he shall cause an investigation to be made by an actuary into the financial condition of the life insurance business, carried on by him, including a valuation of his liabilities and shall act in accordance with the recommendations of the actuary.

(3) The insurer shall send a copy of the report submitted to him under subsection (2) of this section, to the Commission/ Corporation.

59. Commission/ Corporation to Inspect Insurers.

(1) The Commission/ Corporation shall inspect the affairs of every insurer at least once in three years.

(2) The commission/ Corporation may, at any time before the expiry of three years, inspect the affairs of an insurer if it has reason to believe:

(a) That the interests of the policy holders, shareholders and members of the public, could be prejudiced;

(b) That the insurer is unable to meet his obligations under this Act;

(c) That the insurer has not complied with the provisions of this Act;

(3) The Commission/ Corporation may appoint competent persons to conduct the inspection on its behalf.

(4) An inspector under this section may question any officer of the insurer under oath.

(5) The insurer shall co-operate with the inspector(s) by providing full access to books, records, files and other documents which are relevant to the inspection, and any person who fails to co-operate, commits an offence.

(6) The Commission/ Corporation shall inform the insurer of the conclusion reached following the inspection and may require the insurer to comply, within a specified period, with any directives that may be issued to remedy defects disclosed by the inspection.

CHAPTER FIVE

REINSURANCE BUSINESS.

60. Reinsurance.

(1) An insurer can reinsure part of the risks he has accepted either under a reinsurance contract or facultative.

(2) Reinsurance contracts shall contain the minimum stipulations as determined by the Commission/ Corporation.

(3) In the case of reinsurance arranged through a reinsurance or intermediary the contract shall not contain any stipulation which prohibits any direct relationship between the insurer and the reinsurer.

61. Modification in Insurer's Net Retention.

(1) An insurer shall inform the Commission/ Corporation within thirty days of any modification in the amount of its net retention in all classes of business which it undertakes.

(2) Where the Commission/ Corporation considers the retentions submitted under subsection (1) of this section, not to be in accordance with the financial standing of the insurer, it may request an explanation of the technical or other reasons for establishing these retentions, and on the basis of the explanation, the Commission/ Corporation may order the adjustment of the net retention.

62. Annual Re-insurance Reports.

An insurer and a reinsurance company licensed under this Act shall, within three months, submit to the Commission/ Corporation, in a prescribed form:-

(a) Details of the reinsurance or retrocession contracts;

(b) Details of the reinsurers or retrocessionaires with whom they maintain business relations in respect of risks falling within the provisions of this Act.

63. Prohibition of Contracts with Certain Reinsurance Companies.

The Commission/ Corporation may after receiving reliable information that a reinsurance company:-

(i) Cannot meet the reinsurance claims;

(ii) Has doubtful integrity in its business dealings; or

(iii) For any other reasonable cause; prohibit insurance and reinsurance companies under this Act, from entering into insurance contracts with that company.

64. Modifications where Terms are not Favourable.

The Commission/ Corporation may after the scrutiny of a reinsurance document, direct an insurer:-

(a) To make modifications in its terms and conditions of the contract, as it may specify, at the time of the renewal of a reinsurance contract;

(b) Not to renew the reinsurance contract; if the terms and conditions of the contract. are not favourable to the insurer or are not in the interest of the economy of Southern Sudan, the insurance industry or public interest.

65. Negotiations to be in Official Capacity.

Insurance agents, directors, administrators, employees or shareholders of insurance broking companies shall negotiate or intervene in the placement of reinsurance in their official capacities.

66. Foreign Reinsurance Representatives.

(1) A foreign reinsurance company may, with the authority of the Commission/ Corporation, appoint a reinsurance broker or reinsurance company licensed under this Act to be its representative in Southern Sudan for purposes of accepting reinsurance business on its behalf.

(2) The Commission/ Corporation may on granting authority under subsection (1) attach such conditions as it may deem necessary.

(3) Where authority of the Commission/ Corporation is granted under this section, the foreign reinsurance company shall establish and maintain at the Bank of Southern Sudan a security deposit as may be prescribed from time to time by the Bank of Southern Sudan.

67. Mandate to Place Reinsurance.

(1) An insurer or reinsurer licenced under this Act, may place facultative reinsurance with any international organization only where local capacity is exhausted and /or is not available.

(2) The provisions of subsection (1) above shall not affect the right of that international organization to accept or reject all or any part of minimum reinsurance cessions offered to be placed by any insurer or reinsurer.

(3) Any insurer or reinsurer who fails to comply with the provisions of subsection (1) on the percentage of the minimum reinsurance cessions, commits an offence and shall on conviction, be liable to a fine to be prescribed by the Commission/ Corporation in consultation with the Bank of Southern Sudan.

(4) Subject to the relevant agreements that may respectively be reached, the Commission/ Corporation may vary the minimum reinsurance cessions under subsection (1).

CHAPTER SIX

AMALGAMATIONS, TAKEOVERS AND TRANSFERS.

68. Amalgamation, Takeovers and Transfers of Business.

(1) No insurer shall:-

(a) Amalgamate non-life insurance with the business of another insurer; or

(b) Transfer or accept any transfer of non-life insurance to or from another insurer, unless the amalgamation or transfer is approved by the Commission. / Corporation

(2) No life insurance business shall be amalgamated with or transferred to another life insurance business of another insurer except with the permission of the Commission/ Corporation.

(3) Non-life insurance business may be amalgamated with another non-life insurance business with the approval of the Commission/ Corporation.

69. Application for Amalgamation, Takeover or Transfer.

(1) Where two or more insurers, one of which is licensed under this Act, agree or intend to amalgamate, takeover or transfer insurance business or any class from one to another:-

(a) Both insurers wishing to merge jointly; or

(b) The insurer wishing to transfer business to another insurer shall apply to the Commission/ Corporation for approval of the amalgamation, takeover or transfer, as the case may be.

(2) An application under subsection (1) of this section, shall be accompanied by:-

(a) The document under which the proposed amalgamation, takeover or transfer is to take place;

(b) The audited accounts and balanced sheets of each insurer intending to amalgamate, takeover or transfer; and

(c) Any other report or document on which the proposed amalgamation, takeover or transfer is based.

(3) Where the amalgamation or transfer is in respect of life insurance business, in addition to the requirements under subsection (2) above, the application shall be accompanied by a report of the likely effect of the amalgamation, takeover or transfer, to the policy holders, prepared by an actuary approved by the Commission/ Corporation.

70. Notice of Amalgamation, Takeover or Transfer.

(1) The parties intending to amalgamate, takeover or transfer, shall before application under section 69:-

(a) Publish a notice of the proposed amalgamation, takeover or transfer in the Gazette and at least in one English language newspaper with wide circulation in Southern Sudan;

(b) Send a notice of the application to all the policy holders and claimants of the parties;

(c) Make available for inspection at the principal offices of the parties, a statement detailing the particulars of the proposed amalgamation, takeover or transfer, including, in the case of life insurance business, the actuarial report under subsection (3) of section 69for at least thirty days.

(2) The notice referred to under subsection (1) of this section, shall invite any person, who has reasonable ground to believe that he would be adversely affected by the amalgamation or transfer to submit a written presentation to the Commission/ Corporation within thirty days from the last day of publication.

71. Conditions for Approval of Amalgamation, Takeover or Transfer.

(1) The Commission/ Corporation shall not approve an application for transfer of life insurance business unless the transaction involves the transfer of assets relating to the life insurance business proposed to be transferred in accordance with the provisions of this section.

(2) If the transfer covers the whole of the life insurance business of the transferor, all the assets representing the legal fund maintained by the transferor, shall be transferred.

(3) If the transfer applies to a part of the life insurance business of the transferor, the approved proportion of the assets representing the legal fund maintained by the transferor shall be transferred.

72. Decision of the Commission/ Corporation on Amalgamation, Takeover or Transfer.

(1) The Commission/ Corporation may, after considering the documents required under section 69, approve or refuse the proposed amalgamation, takeover or transfer, subject to terms and conditions it may consider necessary.

(2) The Commission/ Corporation shall make its decision under subsection (1), of this section, within four months from the date of publication and if no communication is received by the parties with in that period, the parties shall effect the amalgamation, takeover or transfer.

(3) After making the decision under subsection (1) of this section, the Commission/ Corporation shall:-

(a) Publish its decision in the Gazette and in one English language newspaper, of wide circulation, published in Southern Sudan; and

(b) Send a copy of its decision to the parties to the amalgamation, takeover or transfer and any person who made a presentation under section 70 of this Act.

(4) Where the amalgamation, takeover or transfer is refused by the Commission, it shall, give reasons for refusal, to the parties.

(5) Any person aggrieved by the decision under this section may, appeal to the Commissioner with in thirty days from the date of receipt of the decision, and the Minister shall make his decision within thirty days from the receipt of the appeal.

73. Effect of Approval of Amalgamation, Takeover or Transfer.

(1) Subject to the provisions of subsection (2) below, any instrument giving effect to an amalgamation, takeover or transfer approved by the Commission/ Corporation shall be legally effective:-

(a) To transfer to the amalgamated insurer or transferee, all the transferor's rights and obligations under the policies included in the instruments; or

(b) If the instrument so provides, to secure the continuation by or against the amalgamated insurer or the transferee of any legal proceedings by or against either party to the amalgamation or against the transferor, which relates to those rights or obligations, notwithstanding the absence of any agreement or consent which would otherwise be necessary for it to be legally effective for those purposes.

(2) Except where the Commission/ Corporation directs otherwise, a policy holder whose policy is part of the approved amalgamation, takeover or transfer, shall not be bound by the instrument approving the amalgamation, takeover or transfer, unless he has been given a written notice of its execution by either of the insurers involved.

(3) Where an amalgamation, takeover or transfer has been approved, by the Commission/ Corporation, the amalgamated insurer or the transferee insurer, shall within seven working days, from the date of completion of the amalgamation or transfer, deposit with the Commission/ Corporation, certified copies of:-

(a) Statements of the respective assets and liabilities; and

(b) The documents under which the amalgamation or transfer was effected.

CHAPTER SEVEN

INSOLVENCY AND WINDING UP.

74. Insolvency and Winding Up.

(1) Without prejudice to the provisions of the Insurance Act, 2010, an insurer carrying on life insurance business, shall not be wound up voluntarily except for the purposes of effecting an amalgamation, takeover or transfer.

(2) The Commission/ Corporation may petition the Court for winding up of the business of an insurer where:-

(a) The insurer is carrying on insurance business without licence issued under this Act; or

(b) The insurer did not comply with the prescribed paid up capital and security deposit requirements, under Chapter one of this Act, or where the margin of solvency of insurer is less than that specified under Chapter four of this Act and therefore insolvent; or

(c) In the absence of an appeal or dismissal of an appeal under subsection (5) of section 36 of this Act for revocation of a licence to take place.

(3) The Court may, after consideration of the petition referred to under subsection (2), order the winding up of the insurer, if it is of opinion that there are sufficient reasons for that.

(4) Except where it is otherwise provided under this Act, the winding up procedures provided under the Insurance Act, 2010 shall apply.

CHAPTER EIGHT

INTERMEDIARIES, RISK MANAGERS, LOSS ASSESSORS, LOSS ADJUSTERS, INSURANCE SURVEYORS AND SETTLING AGENTS.

75. Brokers Agents.

(1) No person shall carry on the business of an insurance or reinsurance broker, an insurance agent, risk manager, a loss assessor, loss adjuster, an insurance surveyor or a claims settling agent, unless he is licensed for that business by the Commission/ Corporation.

(2) An administrator, manager, an auditor or employee of an insurance company, shall not act as the broker agent, risk manager, loss assessor or adjuster, surveyor or claim settling agent of that company.

(3) No person shall use the name of insurance broker or agent, or risk manager, loss assessor or adjuster, insurance surveyor or claim settling agent unless he is licenced to carry on that business under subsection (1) of this section.

76. Brokers to be Bodies Corporate.

No person other than a company incorporated under the Insurance Act, 2010, shall carry on business as an insurance broker.

77. Application and Qualifications for Licence.

(1) Application qualifications for registration under section 75of this Act, shall be prescribed by the Commission/ Corporation.

78. Disqualifications.

The Commission/ Corporation shall not grant a licence or renew a licence for a broker, agent, risk manager, loss assessor, loss adjuster, insurance surveyor or claims settling agent if the applicant:-

(a) Has been found to be of unsound mind by a court of competent jurisdiction;

(b) Has ever been convicted of an offence relating to fraud or dishonesty;

(c) Has at any time with in the five years preceding the date of his application become bankrupt, applied to take the benefit of the law for the relief of bankrupt or insolvent debtors, compounded with his creditors or made an assignment of his remuneration for their benefit;

(d) Being a broker or is a director of an insurer.

79. Licence and Renewal of Licence.

(1) Where the Commission/ Corporation is satisfied that:-

(a) The financial standing of the applicant is sound;

(b) The knowledge, skill and experience of the principal officer are adequate;

(c) In the case of a broker, the professional indemnity policy of insurance is satisfactory;

(d) The applicant is not disqualified under this Act;

(e) The applicant is, to comply or likely to continue to comply with the provisions of this Act and regulations and directions made or issued under this Chapter.

(2) A licence shall be issued for a calendar year and may be renewed for one calendar year on each renewal.

80. Conditions for Revocation or Suspension of Licence.

(1) The Commission/ Corporation:-

(a) May revoke or suspend a licence of any insurance or reinsurance broker, risk manager, loss assessor, loss adjuster, insurance surveyor or claims settling agent, on any ground on which it could have refused to grant the licence.

(b) Shall cancel the licence of any broking company or adjuster who fails to satisfy the paid up capital and security deposit requirements under section 79 above.

(2) The Commission/ Corporation may impose fines, suspend or revoke a licence of any intermediary depending on the gravity of the offence where:-

(a) There is breach of professional etiquette;

(b) Discounts are given which are not provided for under the authorized premium rates;

(c) The whole or part of the intermediaries commission is offered to an insured;

(d) Terms and conditions are offered which are not included in the policies and endorsements;

(e) Quotations are given in the intermediaries own names without the authority of the insurers;

(f) Monies received in payment of premium are used for intermediaries own benefits or the benefit of third parties, have not been paid to the insurer in accordance with the provisions of this Act;

(g) The intermediary ceases to conduct business;

(h) The prescribed fees payable to the Commission/ Corporation remains unpaid;

(i) The intermediary is adjudged bankrupt by a court.

(3) Before revoking or suspending any licence, the Commission/ Corporation shall give notice to the person concerned stating the reasons for the proposed revocation or suspension and shall afford the person an opportunity to be heard.

(4) Before invoking the provisions of subsection (2), the Commission/ Corporation shall serve a warning for a period to be specified by regulations made under this Act.

(5) Any person aggrieved by suspension of a licence under this section may appeal to the Commissioner/ Corporation with in thirty days from the date of receipt of information of renovation, and the Commissioner shall make his decision within thirty days from the date of presentation of the appeal.

(6) Where in the interest of the policy holders, circumstances warrant immediate action, the Commission/ Corporation may revoke or suspend a licence, without giving any notice or warning to the person concerned.

(7) Notice of revocation or suspension of the licence shall be advertised by the Commission/ Corporation in the Gazette and an English language newspaper with wide circulation in the area where the affected intermediary has an office.

81. Revocation or Suspension of Intermediary Licence.

The provisions of sections 34 and 35, shall apply to an insurance or reinsurance broker, risk manager, loss assessor, loss adjuster, insurance surveyor or claims settling agent;

82. Insurance Brokers and Loss Adjusters Paid up Capital.

(1) No insurance broking company shall carry on business of insurance broking unless it maintains at all times, while carrying on that business, a paid-up capital to be prescribed by the Bank of Southern Sudan out of which a prescribed sum shall be deposited with the Bank of Southern Sudan as a security deposit.

(2) No loss adjuster shall carry on the business of Loss Adjuster unless he maintains at all times, while carrying on that business, a professional indemnity policy as the Bank of Southern Sudan may prescribe.

(3) The Commissioner may, on the advice of the Commission/ Corporation and approval of the Minister for Finance, by order, amend the prescribed paid-up capital, the security deposit or the professional indemnity policy provided under this section.

83. Persons Not to Act as Agents.

No person shall act as an insurance agent who:-

(a) Is a public servant or employee;

(b) Is an administrator, manager, director, auditor or employee of any:-

(i) Insurance or reinsurance company; or
(ii) Reinsurance broking company; or

(iii) Any institution regulated by the Financial Institutions Act, 2003.

(c) Is a risk inspector, insurance loss adjuster or insurance valuer;

(d) In the opinion of the Commission/ Corporation, lacks the minimum knowledge, skill or experience in the insurance business, or whose financial stand does not measure to the requirements.

84. Agents and Brokers not to Engage in Loss Adjusting.

(1) An insurance agent shall not engage in the insurance business, insurance broking, risk inspection business loss adjusting or be a director in any company engaged in the above business.

(2) An insurance broker shall not engage in the business of risk inspection, loss adjusting or be a director in any company engaged in any of the above businesses.

85. Intermediaries to Deal with Licensed Companies.

No insurance intermediary shall place insurance business with an insurance company which is not licensed under this Act.

86. Annual Reports and Financial Statements.

(1) Each insurance broking company shall prepare and submit to the Commission/ Corporation, within two months from the end of each financial year, in a prescribed form an annual report containing:-

(a) Prescribed particulars relating to all the financial transactions undertaken by it during that year;

(b) A certified true copy of its financial statements, auditors' certificate and any reports presented to the shareholders;

(c) Details of commission scales and incentive plans, bonuses and other incentives; and

(d) A statement detailing premiums which remained unpaid by the insured for more than sixty days from the date of inception of cover.

(2) Each insurance adjusting company shall prepare and submit to the Commission/ Corporation, within two months from the end of each financial year, in a prescribed form, an annual report containing:-

(a) Prescribed particulars relating to all the financial transactions undertaken by it during that year;

(b) Certified true copy of its financial statements, auditors certificate and any reports presented to the shareholders; and

(c) Any other information that the Commission/ Corporation may require.

87. Submission of Statements to Insurers.

Where the Commission/ Corporation raises no objection to the financial statements, individual agents and insurance broking companies shall send copies of their statements to all the licensed insurers with whom they have business relationships within two months of their presentations.

88. Records to be Kept.

(1) Every insurance agent, insurance or reinsurance broker, risk manager, loss assessor, loss adjuster, insurance surveyor or claims settling agent shall keep records of all the insurance transactions undertaken.

(2) Records kept under subsection (1) of this section, shall contain particulars of the names and addresses of the insured persons and the insurer, the nature of coverage's, premium collected and any other particulars that may be prescribed by the Commission/ Corporation.

89. Advertisement.

The provisions of section 43 of this Act, shall apply in this chapter in relation to advertisements.

90. Payment of Premium.

(1) An insurance broker shall, pay to the insurers all the premiums collected on their behalf within thirty days from the receipt of the premiums.

(2) Where premium is received in full, a broker shall not make partial payment unless the insurance contract specifically provides.

91. Insurance Agents Commission.

(1) Insurance intermediaries shall be remunerated by insurers solely by way of commission and other approved incentives or bonus schemes paid in accordance with the Commission's/ Corporation's scales and plans.

(2) Any form of incentive or bonus schemes offered by insurers to insurance agents must have the prior approval of the Commission/ Corporation.

92. Loans to Agents.

No insurance intermediary shall, at any time, have loans outstanding to insurance companies in excess of aggregate of five hundred thousand Sudanese Pounds without prior approval of the Commission/ Corporation.

93. Portfolio Transfer or Sale.

(1) An insurance intermediary may transfer or sell his portfolio to another intermediary, provided that prior approval is obtained from the Commission/ Corporation.

(2) The Commission/ Corporation shall not approve a transfer or sale unless it is satisfied that the transferor has settled all the financial obligations with all the insurance companies with which he was dealing, prior to the transfer.

(3) A portfolio shall be transferred in its entirety unless the Commission/ Corporation otherwise directs.

(4) Where a transfer or sale is approved, the parties to the transfer or sale shall inform all the policy holders and the insurers with which they place business of the transaction.

(5) Where the transfer or sale is effected without the approval of the Commission/ Corporation, the Commission/ Corporation shall revoke the licence of the transferee or seller of the portfolio, and that person shall be prohibited from obtaining another licence for a period of five years from the date of transfer or sale.

94. Death of an Agent.

(1) On the death of an insurance agent, the licence shall automatically lapse.

(2) Where at the death of the agent, the contract entered by the agent is a long term contract, the estate of the deceased agent shall continue to receive commission.

95. Relationship with the Insurer.

The appointment of an insurance agent by a person does not preclude that person from having direct communication with the insurance company or vice versa.

CHAPTER NINE

MISCELLANEOUS.

96. Adjustment of Losses Due to Contravention.

No person shall carry on adjustments or losses accruing under insurance contracts issued in contravention of this Act.

97. Insurers and Brokers Associations.

(1) There shall be established Insurers and Brokers Professionals Associations.

(2) Every licensed insurer shall be a member of the Insurers Professionals Association and shall subscribe to and conform with the Association's code of conduct.

(3) Every licensed broker shall be member of the Brokers Professionals Association and shall subscribe to and conform to the Association's code of conduct.

(4) Any insurer or broker who refuses, neglects or fails to join the Association or defaults in his obligations may be suspended by the Commission/ Corporation from transacting insurance business for a period of not less than one year, and if the refusal, neglect, failure or default continues after the suspension, it shall constitute a ground for revocation of licence.

98. Display of Licence.

(1) Any person licensed under this Act, shall display his licence in a prominent place at the principal place of business, where the public can have access to it, and shall display a copy of the licence in every branch of the business in Southern Sudan.

99. Insurable Interest Policies.

(1) No policy of insurance shall be issued to any person on the life of any person where that person has no insurable interest in the life or event.

(2) For the purposes of subsection (1) the following persons shall have, an insurance interest:-

(a) A parent of a minor or the guardian of a minor on the life of a minor;

(b) A husband, on the life of his wife;

(c) A wife on the life of her husband;

(d) Any person on the life of another upon whom he is wholly or in part dependent for support or education;

(e) A company or other person, on the life of an officer or employee of the company or that other person;

(f) A person who has a pecuniary interest in the duration of the life of another person, in the life of that person to the extent of that pecuniary interest at the outset, only.

100. Offenses and Penalties.

(1) Any person who carried on or is privy to the carrying on of any business, under a company established contrary to this Act, commits an offence and shall, on conviction, be imprisoned for a term not exceeding four years or with fine or with both.

(2) In addition to the punishment provided under subsection (1) above, the licence of the convicted person, shall be cancelled and shall be disqualified from acquiring a licence for two years and shall thereafter not be issued with a licence without the approval of the Commissioner in consultation with the Commission/ Corporation.

(3) Any person who is a manager or an officer of a company licensed under this Act, who:-

(a) Fails to take any reasonable steps to secure compliance with the requirements of this Act;

(b) Makes any statement or gives any information which is false, in answer for information required under any provision of this Act;

(c) Is privy to the furnishing of any false information under this Act, commits an offence, and shall on conviction be imprisoned for a term not exceeding two years or with fine or with both.

(4) Any insurance or reinsurance company which fails to comply with an order issued by the Commissioner or the Commission under this Act, or contravenes any provisions of this Act, commits an offence and shall on conviction be liable to:-

(a) Public or private admonition; and

(b) A fine; and

(c) Suspension or revocation of the license.

(5) Any insurance intermediary which fails to comply with an order issued by the Commissioner or the Commission, under this Act, or contravenes any provisions of this Act, commits an offence and shall on conviction be liable to:-

(a) A private or public admonition; and

(b) A fine; and

(c) Suspension or revocation of the license.

(6) Any officer of a company under this Act, who authorizes the contravention of or contravenes any provision of this order commits an offence and shall on conviction be personally liable to the penalty specified in relation to the contravention.

101. Power to Make Regulations.

The Commission/ Corporation may in consultation with the Chairperson of the Commission/ Corporation and approval of the Minister for Finance, make regulations:-

(a) Providing for the procedure and formalities for the grant, suspension and revocation of licenses granted under this Act;

(b) Relating to capital for companies licensed under this Act;

(c) Relating to reserve funds, security deposits and investments;

(d) Providing for the qualifications of directors, management and key staff of a company licensed under this Act;

(e) Providing for the form and content of financial and other reporting requirements for companies licensed under this Act;

(f) Prescribing the method of calculation of assets and liabilities of an insurer;

(g) Providing for the handling of appeals allowed under this Act;

(h) Generally for the giving effect to the provisions of this Act.

Given under my hand this … day of …. Year, 20….

……

President of the

GOVERNMENT OF SOUTHERN SUDAN.